

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARTIN NORIEGA-NAVARRO,

Defendant.

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CASE NO. 8:09CR212

**MEMORANDUM
AND ORDER**

This matter is before the Court on the Defendant's notice of appeal (Filing No. 110), the Clerk's memorandum regarding the untimeliness of the notice (Filing No. 111), and the Defendant's pro se motion for leave to file his notice of appeal out of time (Filing No. 109).

On February 8, 2010, the Court sentenced the Defendant to 210 months imprisonment on Count II and a concurrent term of 120 months imprisonment on Count VIII. Judgment was filed on February 11, 2010. In approximately March 2012, the Defendant inquired in a letter as to the status of his appeal. The Court directed the Clerk of the Court to return his letter with a note stating that he had not filed an appeal, and the Clerk did so in a letter dated April 9, 2012. On April 17, 2012, the Defendant placed his motion for leave to file his notice of appeal out of time, and his notice of appeal, in the prison mail system.

Federal Appellate Rule of Procedure 4(b)(1)(A)(i) provides that, under the circumstances presented in this case, a criminal defendant's notice of appeal must be filed within 14 days of the entry of the judgment or order being appealed. Federal Appellate Rule of Procedure 4(b)(4) provides that the 14-day period may be extended by 30 days upon a finding of excusable neglect or good cause.

In this case, even assuming that the Defendant has shown excusable neglect or good cause, he is not entitled to relief. This Court's authority to extend the time to file the notice of appeal ended 30 days after the expiration of the original 14-day period. *United States v. Packett*, 125 F. App'x 761, at *1 (8th Cir. 2005). Accordingly, the notice of appeal is untimely.

IT IS ORDERED:

1. The Defendant's notice of appeal (Filing No. 110) is untimely;
2. The Defendant's motion for leave to file his notice of appeal out of time (Filing No. 109) is denied; and
3. The Clerk is directed to mail a copy of this Memorandum and Order to the Defendant at his last known address.

DATED this 24th day of April, 2012.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge